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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CANTON

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|-------------------|---|-----------------------------------|
| IN RE: |) | CHAPTER 7 |
| |) | |
| JUDITH L. HARPER, |) | CASE NO. 08-60448 |
| |) | |
| Debtor. |) | JUDGE RUSS KENDIG |
| |) | |
| |) | MEMORANDUM OF DECISION |
| |) | ON DEBTORS' MOTION TO |
| |) | WAIVE CHAPTER 7 FILING FEE |

This matter is before the court on debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on February 22, 2008. On March 3, 2008, the court entered an order requesting debtors file additional documentation to allow the court to fully assess their current financial condition. Debtors filed an answer on March 25, 2008, providing some documents and explaining to the court's satisfaction why others were unavailable.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and waiver must be premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether debtors' income is 150 percent of the poverty level. Debtors' tax returns show that they are married, filing jointly, with five dependents. According to the Department of Health and Human Services 2008 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/08poverty.shtml>, the poverty income for a family of three is \$17,600. At 150 percent of poverty, the poverty income is \$26,400.00 annually or \$2,200.00 per month.

The court's March 3 order requested Debtor's 2006 tax return and three most recent pay stubs. Debtor responded that she has not filed an income tax return since 2000 because she has not had any taxable income since then, which also means that she has no pay stubs to provide. Debtor provided documentation verifying \$1,230.30 per month in social security income per month (her Schedule I declares her monthly social security income to be \$1,246.00). Debtor's Schedule I also declares \$103.00 per month in food stamps. Using the verified figures as submitted, Debtor has an annualized income of

\$15,999.60. Debtor therefore satisfies the first prong of the court's analysis.

However, the court concludes that Debtor is able to pay the filing fee in installments. While Debtor's budget is modest, and significantly includes only \$15.00 per month in rent or home mortgage payment, Debtor's Schedule J does declare a monthly net income of \$157.50 per month. If applied to the filing fee, this would allow Debtor to pay the filing fee in two months, albeit barely. The filing fee may be paid in more installments than this. Therefore, Debtor has not demonstrated an inability to pay the filing fee in installments and therefore has not met the second prong of the analysis.

Wherefore, in light of the above, the Court hereby **DENIES** Debtor's application to waive the filing fee. Debtor shall be permitted to pay the filing fee in installments of \$75.00 monthly until the fee is paid in full and may pay the amount in full anytime during the payment plan.¹ The first payment is due on April 23, 2008. If paying by mail, Debtor shall send a money order, payable to Clerk, United States Bankruptcy Court, to United States Bankruptcy Court, 201 Cleveland Ave., S.W., Canton, OH 44702. If paying in person, Debtor shall bring either the exact amount of cash or a money order, payable to Clerk, United States Bankruptcy Court, to the Clerk's Office. Failure to pay the filing fee in accordance with this order will result in dismissal of the case.

So ordered.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

¹ The payment schedule is as follows:

| | |
|-----------------|---------|
| April 23, 2008: | \$75.00 |
| May 23, 2008: | \$75.00 |
| June 23, 2008: | \$75.00 |
| July 23, 2008: | \$74.00 |

Service List:

Robert Goldberger
13 Park Ave W
#300
Mansfield, OH 44902

Judith L. Harper
1126 E Main St, Apt 1
Ashland, OH 44805

Anthony J. DeGirolamo, Trustee
Courtyard Centre, Suite 625
116 Cleveland Ave., N.W.
Canton, OH 44702